IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1034 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

VALIMOHMED ALLARAKHA C/O SC DHRUV

Appearance:

Mr.H.N.Sompura, Ld.Asst.GOVERNMENT PLEADER for Petitioner

MS YAMINI J DESAI for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 15/02/2001

ORAL JUDGEMENT

The petitioner has challenged the validity of award dated 9.4.1999 passed in Ref.(LCJ) No.402/90 by the Labour Court, Junagadh.

2. The facts giving rise to the present petition are as under:

(i) The respondent had raised a dispute with regard to termination of his services under the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). According to him, he was a Watchman and had worked for more than 6 years under the petitioner. According to him, without assigning any reason, his service was terminated on 27.8.1982. In pursuance of notice issued by the Labour Court, the petitioner had filed its reply stating that the respondent had worked as a daily wager and denying the fact that the respondent had worked as a Watchman for six years. Though the reply was filed on behalf of the petitioner, no evidence was adduced to show that the respondent had worked for less than 240 days in a year and, therefore, the respondent was not entitled to any right under the provisions of the Act.

(ii) In the circumstances, after appreciation of evidence which was adduced by the respondent, the Labour Court directed reinstatement of the respondent with full backwages from 27.8.1982. Being aggrieved by the said award the petitioner has filed this petition.

3. Learned Asst.Govt.Pleader Mr.Sompura appearing for the petitioner has fairly submitted that possibly through oversight evidence could not be adduced before the Labour Court and relevant record giving details with regard to the presence of the respondent was not produced before the Labour Court and, in the circumstances, the Labour Court presumed that the respondent had worked for more than six years as submitted by him before the Labour Court. It has been submitted by him that, in fact, the relevant documents were produced before the Labour Court when Recovery Application No.128/99 was filed by the respondent before the Labour Court, Junagadh when the impugned award passed by the Labour Court was not implemented. It has been, therefore, submitted by him that an opportunity be given to the petitioner to adduce necessary evidence by quashing the award and by remanding the matter.

4. On the other hand, Ld.Advocate Ms.Yamini Desai appearing for the respondent has submitted that the petitioner had not adduced any evidence to show that the respondent had worked for less than 240 days. It has also been submitted by her that inspite of the award passed by the Labour Court the respondent has not been given any work till today. She has also submitted that

if the impugned award is quashed and the matter is remanded, the respondent should be suitably compensated as the respondent will have to appear before the Labour Court again and that would put him to unnecessary expenses.

5. I have heard the learned advocates. Looking to the fact that though there was some record to show that the respondent had not worked for 240 days in a year, somehow, on account of default of somebody working under the petitioner, the said record was not produced before the Labour Court and, as a result thereof, the impugned award was passed by the Labour Court. Therefore, in the interest of justice, one more chance is given to the petitioner to lead evidence to show that, in fact, the respondent had not worked for 240 days in a year and if there is an evidence to the effect that the respondent had worked for more than 240 days in a year, the respondent should succeed and would get backwages whereas if the respondent had not worked, the State would not be burdened with backwages which are required to be paid under the impugned award.

6. In the circumstances, the impugned award dated 9.4.1999 passed in Ref (LCJ) No.402/90 passed by the Labour Court, Junagadh is quashed. It is, however, directed that the backwages with effect from 9.4.1999 till today as well as a sum of Rs.3,000/- towards costs shall be paid to the respondent within two months from today.

7. Though the State has to make the payment of costs, the said amount should be recovered from the officer who was responsible for not placing the record before the Labour Court as the State exchequer should not suffer on account of carelessness or negligence on the part of one of the officers of the State. It is also directed that during the pendency of the litigation before the Labour Court, the respondent shall be given work as a daily wager watchman as and when services of such a person are required by the petitioner.

8. At this stage, Ld.AGP Mr.Sompura appearing for the petitioner has submitted that if the services of the respondent are not required, it should be open to the petitioner to terminate the service of the respondent in accordance with law. Needless to state that it is always open to the petitioner to terminate the service of the respondent provided that no person junior to the respondent is engaged by the petitioner to do the work which the respondent was doing.

9. Rule is made absolute accordingly to the above extent. Ad interim relief granted earlier stands vacated.

15.2.2001 (A.R.DAVE,J)